

S.B. Cr. Misc. Appl. No.1385/07
In
S.B. Cr. Misc. Petition No.569/01

30.08.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri B.S. Chhaba, Public Prosecutor for
applicant-State.
Shri Anurag Sharma)
Shri Som Dutt Sharma) for complainant-
petitioner.
Shri Manu Bhargava for accused-
respondents.

This matter comes up on
application filed by the Public
Prosecutor with the prayer that the order
dated 25th June, 2007 passed in S.B. Cr.
Misc. Petition No.569/2007 be recalled.
It is averred therein that when this case
was listed on 25th June, 2007, it was
ordered to be adjourned but subsequently
on inquiry from the office it transpired
that the petition has been allowed by
order passed on that date. This petition
was filed at the instance of the

complainant Hamid Khan. Under challenge in the petition was the order dated 23th May, 2001 whereby the Judicial Magistrate, Tijara rejected his protest petition accepting thereby the final report submitted by the police in a complaint case.

While considering the petition and especially on perusal of records, the order dated 25th June, 2007, on the basis of which the aforesaid petition was taken to have been allowed, came to me both as surprise and shock. This order which was purported to have been passed by the Court on 25th June, 2007 was in fact never passed by me. A glance at the order, from the manner of its draftsmanship, makes it evidently clear that not only this order was not passed by me but my signature

contained thereupon was also forged. This matter was earlier listed in Court on 30th May, 2007 on which date it was directed to be listed after vacations. There was as such no outright urgency then to list it again during vacations and I vividly remember having not permitted listing of any criminal case of this nature during vacations. Even the permission slip does not contain the signature of the Court Master. It is indeed a matter of inquiry that how and under what circumstances and at whose instance, the matter was listed in Court. But that is besides the point, significant and much more relevant aspect of the matter is that it was actually listed in Court during vacations on 25th June, 2007 at S.No.118 and the order passed therein was forged. One Advocate

Shri Som Dutt Sharma is shown to have appeared as the counsel for the petitioner in the matter, though on the case file Vakalatnama of only Shri Anurag Sharma, Advocate is available. Further inquiry from the office revealed that though the order was shown to have been passed on 25th June, 2007 but certified copy thereof was applied for by the said Shri Som Dutt Sharma, Advocate on 30th June, 2007. Aforesaid order thus appears to have been forged sometime between 25th and 30th June, 2007. When the record of the Court was checked, it transpired that the result sheet (balance of the cause list) which is prepared by the Court Master at the end of the day was missing. Fortunately, however, the disposal register of the Court was found intact.

In the system that is adopted by the Court Master, all decided case files are first entered in the disposal register and then handed over in the Registry against receipt. This file was not found entered as a decided case either on 25th June, 2007 or at any date thereafter. When the Court Master checked with the files which were listed immediately above and below this petition, it was revealed that the orders passed therein were typed out by Shri Anil Goyal, Sr. P.A., but this order was indicated to have been typed by Shri Omna Kuttan. Upon being asked, Shri Omna Kuttan, after making verification from his short-hand diary, denied having taken dictation of any such order on that day in this case. And the precision with which this task was

accomplished by one, who had access to court records, was such that even the short-hand diary of that day in which dictation of the court orders was taken by Shri Anil Goyal was also caused to disappear from the office. Since I had been nominated to work as a Vacation Judge from 18.6.2007 to 30.6.2007, in view of enormity of work, apart from my regular staff I was provided with the services of four more stenographers on different dates.

Though it is a matter of inquiry but what can logically to be deduced from the circumstances is that mischief of this nature could not take place without the involvement of an insider. But then, a member of the staff alone could not possibly be responsible for this

mischievous. In the course of arguments, the learned Public Prosecutor informed that already in regard to a similar incident of fabricating Court order and forging the signature of the Hon'ble Judge, a co-ordinate bench of this Court in S.B. Cr. Misc. Application No.1108/07 passed an order for lodgment of First Information Report on 2nd August, 2007. C.I.D. (CB) is presently investigating into that matter in FIR No.251/07, P.S. Ashok Nagar for offences u/s. 420, 467, 468, 471 & 120-B IPC. In fact, the learned Public Prosecutor went to the extent of suggesting that some of those who were responsible for forgery in that case may have also had an active role to play in the act of forgery in this case too. But that again is a matter of inquiry and the

police is already seized of the matter.

When this application was listed on 22nd August, 2007, Shri Anurag Sharma, the counsel who originally represented the petitioner and Shri Manu Bhargava, the counsel for the accused-respondents appeared on their own, but Shri Som Dutta Sharma, the Advocate whose presence was shown in the aforesaid order did not appear. The matter was ordered to be listed on 23rd August, 2007 again after showing the name of Shri Som Dutt Sharma, Advocate, but he did not appear on that date also. But when the case was lastly listed on 24th August, 2007, he appeared and submitted that he along with his colleague Pankaj Sharma, both of whom are junior to advocate Shri Ashish Sharma, went to the residence of Shri Anurag

Sharma sometime in the first week of June, 2007 to obtain his no objection on Vakalatnama in this case. Since Shri Anurag Sharma was not available, he could not get such no objection. He further stated that he has no knowledge about the aforesaid order shown to have been passed by this Court on 25th June, 2007. He did not appear in this case but he appeared only in one criminal appeal of his senior in which he prayed for adjournment of the matter. He further stated that he neither signed the slip for listing of the matter, nor did he sign the application for obtaining certified copy of the order dated 25th June, 2007. It is indeed surprising how Shri Som Dutt Sharma could be unaware of what transpired in this case which was listed at S.No.118 of the

cause list when he claims to have appeared in some other matter listed on same day on behalf of his senior. In fact, application for obtaining certified copy was also filed under his signature. It is matter of investigation as to which of them, the counsel or the record, is correct.

In order to clear his position in the matter, Shri Anurag Sharma filed reply to the application and stated in para 2 to 4 of the reply as under:-

"2. That the contents of para no.2 to 4 are denied for want of knowledge. It is submitted that the file of the above noted misc. petition was entrusted to the undersigned and his colleague Mr. Mukesh Pal Advocate by Shri Ashish Sharma, Advocate, who told the undersigned that for some personal reasons he was unable to argue the case. Considering his request and as a gesture of goodness towards a younger lawyer the undersigned acting bonafidely agreed to argue the case without charging any legal fee or remuneration. The

undersigned submits that the Vakalatnama was brought by Shri Ashish Sharma, Advocate, which was stated by him to have been signed by the petitioner Hamid Khan. The undersigned had no occasion to meet the petitioner Hamid Khan at any point of time. It is relevant to state here that Shri Ashish Sharma, Advocate monitored the progress of the case regularly including its listing in the Court.

3. That the above noted misc. petition was listed before the Hon'ble Court on 30.5.2007 when the undersigned lastly appeared in the above noted matter when the same was adjourned to be listed after vacations. It is submitted that Shri Ashish Sharma, Advocate was personally present in the Court on 30.5.2007 and soon after the case as adjourned by the Court, Shri Ashish Sharma asked the undersigned to hand over the file to him as his client Hamid Khan was desirous of engaging some other counsel. Shri Ashish Sharma also asked for a No Objection Certificate from the undersigned, whereupon the undersigned instructed his colleague Shri Mukesh Pal, Advocate to give N.O.C. to Shri Ashish Sharma, Advocate. The undersigned told Shri Ashish Sharma that in future the undersigned or his colleagues would not be responsible for any order being passed in the above noted petition. The undersigned was informed by his colleague Mr. Mukesh Pal, Advocate that the requisite no objection certificate had been handed over by him to Shri Ashish

Sharma, Advocate.

4. That after having given the NOC and returning the file back to Shri Ashish Sharma, Advocate on 30.05.2007 with a clear understanding that his client would engaged another counsel in the matter, the undersigned did not appear in the above noted misc. petition thereafter."

Shri Manu Bhargava, the learned counsel for the accused respondents has also filed reply to this application relevant part of which is reproduced hereunder:-

"1. That the instant case was listed on 30.5.2007 before Hon'ble K.S. Rathore, J. and the case was posted for after vacation. A permission appears to have been taken for getting listed the case without taking no objection from the counsel for answering respondent. The counsel for the answering respondent, as mentioned above was out of Jaipur from 11.6.2007 to 2.7.2007 he was not aware about the passing of the order. On 13.8.2007 the Officer-in-Charge of Alwar Dairy who was assisting. In this particular case and also in other cases of Alwar Dairy came to Jaipur in respect of another case i.e. S.B. C.W.No.6216/05 which was also filed

by the present petitioner. He requested to give progress report regarding the present petition. He himself took query slip from the registry and than came to know that the petition has already allowed on 25.6.2007. Thereafter the counsel for the answering respondent filed an application for obtaining certified copy of the order dated 25.6.2007. He has also submitted an application for inspection of the file and in the meantime the present application has been filed by the Government Advocate.

It is also relevant to mention here that the petitioner has not produced the said before the court below. This information has been provided by the Officer-in-Charge Shri Kem Chand on 23.8.2007 by telephonic message.

In view of the above order dated 25.6.2007 is liable to be recalled."

Though only an order requiring reconsideration of final report submitted by the police and that too, as informed by Shri Manu Bhargava, has so far not been produced before the trial court, never-the-less, this does not in any manner mitigate the gravity of the

offence of forgery. And from what has been stated above, it should be now clear that this act of fabrication of the Court order and forging signature of the Judge could not be the doing of a Court staff alone. This simply could not be possible without, allurement by and knowledge, involvement and in fact, active participation of, certain advocate / advocates. They are both responsible for this unwholly act of polluting the purity of fountain of justice and destroying sanctity of a judicial order.

Advocacy is a noble profession. It is in essence representing a litigant before a Court. This profession takes pride in contributing large number of freedom fighters. In fact, many of those who were in the forefront of freedom

movement had their grooming in this profession. Like several other vocations, this profession is also adopted by very many for earning their livelihood. But this profession is not all about earning. This rather involves more of learning than earning alone. This profession stands for certain values and ethos. It is an art of persuasion. A lawyer has to persuade the Court to get relief for his client within the bounds of the law. But what has happened in this case is indeed an eye opener. It is painful to discover that a lawyer, instead of securing order by persuasion of his arguments, would connive with certain unscrupulous elements into forging a court order. Such elements with a criminal mindset would find their way into legal profession is

indeed pointer to emergence of a disturbing, nay distressing, trend and a cause of concern for the legal fraternity in general and the Bar Council in particular, which owes an obligation to the society to deliberate upon this serious issue so as to take immediate and effective disciplinary measures against them. Such action should start in right earnest and be expedited and concluded so as to hand out befitting penalty to erring members commensurate with the gravity of their misconduct. Whether they or any one of the staff, I am sure, they are handful in number and not even a minuscule of the whole lot of the community but never-the-less such elements bring bad name to the whole institution. Sooner this malady is

addressed to, better it would be for the grace and dignity of the profession. At the same time, it must be observed that the High Court administration, on its part, should also take steps to identify the culprits and proceed against them in disciplinary action.

With a view to ensuring therefore that the culprits are brought to the books and punished, I deem it appropriate to direct the Deputy Registrar (Judl.):-

(i) to lodge a First Information Report with the Police Station concerned, investigation of which shall be conducted by the same Investigating Officer who is dealing with the investigation of FIR No.251/07, P.S. Ashok Nagar for offences u/s. 420, 467, 468, 471 & 120-B IPC, referred to above and provide all

relevant documents and necessary assistance to the Investigating Officer for expeditious completion of the investigation and early filing of the report under Section 173 Cr.P.C.

(ii) to hold a preliminary inquiry so as to find out who amongst the staff may be prima facie responsible for the serious misconduct of forging the Court order and submit his report to Hon'ble the Chief Justice for appropriate disciplinary action in accordance with the rules.

(iii) to forward copy of this order along with photocopy of relevant papers of this petition to the Chairman, Bar Counsel of Rajasthan for appropriate disciplinary action against the advocate/advocates who may be found involved in the matter.

Coming lastly to the prayer made

in this matter, though in the application a prayer has been made for recall of the order dated 25th June, 2007 but I am of the considered view that an order which is fabricated with forged signature of the Judge cannot be accepted as a valid order in the eye of law, therefore, the prayer for its recall appears to be rather misconceived. Even then, the application deserves to be allowed and accordingly allowed and it is directed that the order dated 25th June, 2007 shown to have been passed by this Court be treated as having never been passed and be not acted upon either by the Court concerned or by anyone else. S.B. Criminal Misc. Petition No.569/2001 be treated as pending. The Deputy Registrar (Judl.) shall immediately inform the

trial court of this fact so as to require it not to act upon the aforementioned forged order dated 25th June, 2007.

The application stands allowed with the aforesaid directions.

(Mohammad Rafiq), J.

RS/-